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June 21, 2018

Via CM/ECF

The Honorable Vince Chhabria
United States District Court
Northern District of California
Courtroom 4 - 17th Floor
450 Golden Gate Avenue, San Francisco, CA 94102

Re: *In re Facebook, Inc., Consumer Privacy User Profile Litigation*,
No. 3:18-md-02843-VC, Leadership Application of Ben Barnow
This Document Relates to All Actions

Dear Judge Chhabria:

Pursuant to Pretrial Order No. 1, I respectfully apply to be appointed lead counsel for consumer plaintiffs in this MDL matter. Data privacy in this country is at a crossroads and resolution of the legal issues presented in this litigation will likely impact the privacy rights of virtually all Americans. After decades of fighting for consumers and many years at the forefront of data privacy law, I am uniquely qualified to serve as lead counsel for consumer plaintiffs. I have worked in significant leadership roles with and alongside the vast majority of prominent plaintiffs' class counsel. The accompanying list of supporting counsel attests to my abilities and commitment to working cooperatively with others and effective leadership. See Exhibit A: Supporting Counsel.

I. Experience Leading MDL Privacy Class Actions and Familiarity with the Claims and Issues in this Litigation

I am a nationally-recognized plaintiff's class action counsel and have been recognized as a *Titan of the Plaintiffs Bar*.¹ As a court-appointed lead counsel or equivalent designation, I have successfully led the prosecution of over forty major class actions (including MDLs) where class-wide recoveries were achieved, resulting in benefits valued in excess of five billion dollars being made available to class members. These successes include *Warner v. Toyota Motor Sales, U.S.A., Inc.*, No. CV 15-2171 (C.D. Cal.), where Timothy G. Blood and I served as Class Counsel and, after a period of aggressive litigation, achieved a settlement valued at approximately \$3.4 billion. I also served as a Co-Lead Class Counsel in the *Wisconsin Civil Microsoft Antitrust Litigation* where, after successfully petitioning the Wisconsin Supreme Court regarding the reach of

¹ See Sindhu Sundar, Law360, *Titan of the Plaintiffs Bar: Ben Barnow* (Oct. 8, 2014), <https://www.law360.com/articles/585655/titan-of-the-plaintiffs-bar-ben-barnow>.

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Wisconsin's antitrust laws, my colleagues and I secured a settlement valued at approximately \$224 million.

I have been a trailblazer in privacy class actions for more than a decade. This includes leading eight noteworthy privacy class actions where class settlements were achieved, resulting in benefits valued at over \$1.4 billion being made available to class members. These cases include *In re TJX Retail Security Breach Litigation* (MDL No. 1838), one of the first major data breach MDLs against a national retailer, where I served as a Co-Lead Counsel and was the architect of a settlement praised by the Honorable William G. Young as "excellent," "innovative," and "groundbreaking" that has served as the template for virtually every subsequent significant data breach settlement. Additionally, as a member of the Plaintiffs' Steering Committee in *Sony Gaming Networks and Customer Data Security Breach Litigation*, a high-profile data breach MDL involving over 60 cases, my efforts were instrumental in advancing the litigation and achieving a class-wide settlement. At the final fairness hearing, Judge Battaglia remarked: "Just in the final analysis, the order, much like all the work by both sides throughout the case, has been impeccable, highly professional, and skilled. It's been a real pleasure dealing with you." A more complete description of my achievements in privacy class actions and other major class actions is included in my two-page resume attached as Exhibit B.

My knowledge of the claims, policies, and concepts at issue is not limited to an understanding of relevant law. I actively contributed to the jurisprudence at issue. I have served as a lead counsel or comparable role in four cases where United States Courts of Appeals recognized the plaintiffs' right to bring privacy-based claims in federal court. *Dieffenbach v. Barnes & Noble, Inc.*, 887 F.3d 826 (7th Cir. 2018); *In re Zappos.com, Inc., Customer Data Sec. Breach Lit.*, 888 F.3d 1020 (9th Cir. 2018); *In re Horizon Healthcare Services Inc. Data Breach Litig.*, 846 F.3d 625 (3d Cir. 2017); *Galaria v. Nationwide Mut. Ins. Co.*, 663 F. App'x 384 (6th Cir. 2016).

II. Willingness and Ability to Commit the Resources Needed to Timely Advance the Matter

I understand and appreciate the commitment, both in terms of time and financial resources, needed to effectively and efficiently lead a case of this magnitude. As demonstrated by the successes I have achieved litigating against some of the world's largest corporations, including Microsoft, Toyota, McDonald's, Sony, America Online, Gillette, and others, I possess the resources needed to advance this matter in a timely manner and the willingness and ability to commit them.

III. Commitment to Working Cooperatively with Others

A lesson early learned by me, and practiced by me, is that cooperation is essential to effectively and efficiently advancing a large MDL. Civility and consideration are words with real meaning. They are effective in encouraging synergism, and synergism leads to definition of the issues, clarity, consensus, and results. My commitment to building consensus has been recognized

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by other counsel. In one article, a partner from a top defense firm remarked: “He’s particularly skilled at finding consensus and bringing resolutions . . . Most of my memories in the courtroom setting concern him trying to bring that kind of order to the plaintiffs’ side of the case. Because he’s often dealing with maybe 30 or so other lawyers, all of whom want to be standing in his shoes.” Law360, *Titan of the Plaintiffs Bar: Ben Barnow* (Oct. 8, 2014). The list of firms with which I have served in a leadership capacity is comprehensive. I not only have colleagues, but also friends, on both sides of the “v.” That represents a level of respect and is a strong indicator of my ability to shepherd litigation to fair, proper, and efficient resolution. If appointed, that is what I will strive to achieve here.

IV. Ability to Maintain Reasonable Fees, Costs, and Expenses

I have a proven commitment to efficiency that is apparent from the many complex cases I have led. I firmly believe communication and oversight are the keys to maintaining reasonable fees, costs, and expenses. At the outset, it is important to communicate expectations to all plaintiff’s counsel. This is generally accomplished by sending a letter to all plaintiff’s counsel containing guidelines detailing specifically what tasks can and cannot be billed for, requiring that all work performed be approved by lead counsel, and mandating the submission of regular time reports to lead counsel for review. To confirm the guidelines are being followed, oversight via the consistent review of time reports is needed until the conclusion of a case. If appointed Lead Counsel, I will enforce a similar approach to ensure the efficient advancement of this matter.

Respectfully submitted,



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